



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0763]

RIN 1625-AA00

Safety Zone, Oyster Festival 30th Anniversary Fireworks Display,
Oyster Bay; Oyster Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Oyster Bay near Oyster Bay, NY for the Oyster Festival 30th Anniversary fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays. This rule is intended to restrict all vessels from a portion of Oyster Bay before, during, and immediately after the fireworks event.

DATES: This rule is effective from October 19, 2013 to October 20, 2013. This rule will be enforced from 6:00 p.m. to 8:00 p.m. on October 19, 2013 or in the event of inclement weather from 6:00 p.m. to 8:00 p.m. on October 20, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0763]. To view documents mentioned in this

preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Scott Baumgartner, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468-4559, Scott.A.Baumgartner@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency

for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable with the time remaining before the event to publish a NPRM, hold a comment period, and publish a final rule as the event would occur before the rulemaking process was complete. The application for this event was received by the Coast Guard on July 26, 2013. Receipt on this date provided less than 135 days advance notice as is required for new marine events and therefore resulted in late notification to the Coast Guard. Any delay in this regulation's effective date would be hazardous since immediate action is needed to promote the safety of life and property on navigable waters from the hazards associated with fireworks events.

Delaying the effective date by first publishing a NPRM would be contrary to the rule's objectives of ensuring safety of life on the navigable waters during the scheduled event as immediate action is needed to protect event participants and spectators from the hazardous nature of fireworks displays, including unexpected pyrotechnics detonations and burning debris.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register for the same reasons discussed above.

B. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1226, 1231, 1233; 46 U.S.C. Chapters 454, 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6 and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory special local regulations and safety zones.

The Oyster Festival 30th Anniversary Fireworks Display is scheduled for October 19, 2013 and is one of several events associated with the Oyster Bay Oyster Festival. The Oyster Festival 30th Anniversary Fireworks display is expected to attract large numbers of spectator vessels that will congregate around the event location. A safety zone is needed to protect both spectators and participants from the safety hazards created by it, including unexpected pyrotechnics detonation and burning debris, and to provide for the safety of life on navigable waterways during the Oyster Festival 30th Anniversary Fireworks display.

C. Discussion of the Temporary Final Rule

This rule establishes a temporary safety zone for the Oyster Festival 30th Anniversary Fireworks display, in the vicinity of Oyster Bay, NY.

This rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless

authorized by the COTP or designated representative.

The COTP will cause public notifications to be made by all appropriate means including but not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The regulated area will be of limited duration and cover only a small portion of the navigable waterways. Furthermore, vessels may transit the navigable waterways outside of the regulated area. Vessels requiring entry into the regulated area may be authorized to do so by the COTP or designated representative.

Advanced public notifications will also be made to the local

maritime community by the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the regulated area will be of limited size and of short duration, and vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as a regulated area. Additionally, notifications will be made before the effective period by all appropriate means, including but not limited to the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the events.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to

assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this

rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and

3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland

Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6,

and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0763 to read as follows:

§ 165.T01-0763 Safety Zone; Oyster Festival 30th Anniversary
Fireworks Display, Oyster Bay, Oyster Bay, NY

- (a) Location. The following area is a safety zone: All waters of Oyster Bay within a 500-foot radius of the fireworks launch site located near Bayside Avenue at the Theodore Roosevelt Memorial Park in Oyster Bay, NY in approximate position 40°52'40.16" N, 073°31'56.21" W North American Datum 1983.
- (b) Enforcement Period. This rule will be enforced from 6:00 p.m. until 8:00 p.m. on October 19, 2013. If the event is postponed due to inclement weather, then this rule will be enforced from 6:00 p.m. to 8:00 p.m. on October 20, 2013.
- (c) Regulations. The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entering into, transiting through, remaining, mooring or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) or the designated representatives.
- (1) Definitions. The following definitions apply to this section:

(i) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(ii) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound.

(iii) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(2) Spectators desiring to enter or operate within the regulated area should contact the COTP Sector Long Island Sound at 203-468-4401 (Sector Long Island Sound command center) or the designated representative via VHF channel 16 to obtain permission to do so. Spectators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Sector Long Island Sound or the designated on-scene representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

Dated: September 20, 2013.

H. L. Morrison,
Commander, U. S. Coast Guard,
Alternate Captain of the Port, Sector Long Island Sound.

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